



Belgium's execution of a European arrest warrant in order to surrender the applicant to the Italian authorities did not breach the Convention

In today's Chamber judgment¹ in the case of [Pirozzi v. Belgium](#) (application no. 21055/11) the European Court of Human Rights held, unanimously, that there had been:

no violation of Articles 5 § 1 (right to liberty and security) and 6 § 1 (right to a fair trial) of the European Convention on Human Rights.

The case concerned Mr Pirozzi's detention by the Belgian authorities and his surrender to the Italian authorities under a European arrest warrant (EAW) with a view to enforcing a criminal conviction imposing 14 years' imprisonment for drug trafficking.

The Court found, in particular, that Mr Pirozzi's arrest by the Belgian authorities with a view to placing him in detention and surrendering him to the Italian authorities had been carried out in accordance with lawful procedures.

The Court also held that the Belgian courts' implementation of the EAW had not been manifestly deficient such that the presumption of equivalent protection was rebutted, and that Mr Pirozzi's surrender to the Italian authorities could not be considered to have resulted from a trial amounting to a flagrant denial of justice.

Principal facts

The applicant, Vittorio Pirozzi, is an Italian national who was born in 1952. He is currently detained in Spoleto Prison (Italy).

In 2002 the Brescia Court of Appeal sentenced Mr Pirozzi to 15 years' imprisonment and ordered him to pay a fine of 80,000 euros (EUR) for drug trafficking. The judgment was issued in his absence, as Mr Pirozzi had been unable to appear for medical reasons. However, he was represented by his lawyer. The Brescia court, in response to an appeal, subsequently reduced the sentence by one year.

In 2010 the Naples Public Prosecutor's Office issued an EAW with a view to enforcing the sentence still to be served. Mr Pirozzi, who was tracked down in Brussels, was arrested by the Belgian police in August 2010. The day after his arrest he was presented to an investigating judge, who ordered that he be placed in detention. A few days later the Belgian courts held that the EAW was enforceable and he was handed over to the Italian authorities in September 2010.

Complaints, procedure and composition of the Court

Relying on Article 5 § 1 (right to liberty and security), Mr Pirozzi alleged that his arrest by the Belgian authorities had been unlawful. In particular, he considered that the evidence concerning the measures taken to find and arrest him had not been included in the public prosecutor's office case file and that this had made it impossible to review the lawfulness and propriety of the operations preceding his arrest.

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

Relying on Article 6 § 1 (right to a fair trial), the applicant complained about his surrender to the Italian authorities under an EAW. In particular, he considered that the Belgian authorities had surrendered him to the Italian authorities without reviewing the lawfulness and propriety of the EAW, although it had been based on a conviction resulting from a trial *in absentia*.

The application was lodged with the European Court of Human Rights on 22 March 2011.

Judgment was given by a Chamber of seven judges, composed as follows:

Robert Spano (Iceland), *President*,
Paul Lemmens (Belgium),
Ledi Bianku (Albania),
Nebojša Vučinić (Montenegro),
Valeriu Grițco (the Republic of Moldova),
Jon Fridrik Kjølbro (Denmark),
Stéphanie Mourou-Vikström (Monaco),

and also Stanley Naismith, *Section Registrar*.

Decision of the Court

Article 5 § 1 (right to liberty and security)

The court noted that Mr Pirozzi's arrest with a view to his placement in detention and his surrender to the Italian authorities had been conducted in accordance with a procedure prescribed by law within the meaning of Article 5 § 1 of the Convention. The EAW issued by the Italian judicial authorities had amounted to an arrest warrant, and Belgian law conferred on the police the task of searching for persons whose arrest was prescribed by law, taking them into custody and arresting them, and handing them over to the relevant authorities. Furthermore, in accordance with the law on detention on remand, the Crown Prosecutor had mandated the police to arrest Mr Pirozzi and to take him into custody by entering his place of residence. In addition, in the absence of any sign of arbitrariness in Mr Pirozzi's deprivation of liberty, its lawfulness did not depend on the lawfulness of the preceding operations to track him down and arrest him. **It followed that there had been no violation of Article 5 § 1 of the Convention.**

Article 6 § 1 (right to a fair hearing)

With regard to the lawfulness and propriety of the EAW: in line with the system established by the framework decision on the EAW, it was for the judicial authority which had issued the warrant and to which Mr Pirozzi ought to be handed over, namely the Italian judicial authorities, to assess the lawfulness and validity of the EAW. The Belgian public prosecutor's office did not therefore have discretion to assess the appropriateness of the arrest, and the Belgian courts could have refused to execute it only on the grounds set out in the Belgian legislation². In this connection, the Court considered that the review carried out by the Belgian authorities, thus limited, did not in itself give rise to any problem in relation to the Convention, provided that the Belgian courts examined the merits of the complaints raised under the Convention. In the present case, they had verified that the enforcement of the EAW in Mr Pirozzi's case did not give rise to manifestly deficient protection of the rights guaranteed by the Convention.

With regard to Mr Pirozzi's conviction *in absentia*: the Court noted that the Belgian legislation provided for the possibility that the Belgian court could have refused to execute the EAW if the applicant had been in the same situation as that described in the Court's case-law in the *Sejdovic*

² Law of 19 December 2003 on the EAW.

*v. Italy*³ case judgment. However, this had not been the case here. Mr Pirozzi had been officially informed of the date and place of the hearing before the Brescia Court of Appeal and he had been assisted and defended by a lawyer whom he had himself appointed; moreover, that defence had been effective, in that it had obtained a reduction in his sentence.

The Court therefore noted that the implementation of the EAW by the Belgian courts had not been manifestly deficient such that it rebutted the presumption of equivalent protection afforded both by the EAW system – as defined by the framework decision and clarified by the case-law of the Court of Justice of the European Union – and by its application in Belgian law. The Court also concluded that Mr Pirozzi's surrender to the Italian authorities could not be considered as having been based on a trial amounting to a flagrant denial of justice. In consequence, it considered that **Mr Pirozzi's surrender to the Italian authorities had not been in breach of Article 6 § 1 of the Convention.**

The judgment is available only in French.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.

³ *Sejdovic v. Italy* [GC], no. 56581/00, ECHR 2006-II.